



RYAN & KUEHLER PLLC

WINTHROP, WASHINGTON

February 11, 2019

Mark Schuppe
Water Master
Central Regional Office
Department of Ecology
Email: msch461@ecy.wa.gov

VIA EMAIL

Re: Chewuch Canal Company – Diversion and Delivery of Non-Shareholder Water that is Subject to Minimum Instream Flows

Dear Mr. Schuppe:

I am writing on behalf of the Chewuch Canal Company (the “CCC”) to kindly request direction from the Department of Ecology (“Ecology”) regarding a matter that has only recently come to the CCC’s attention. As you are aware, Donald Lundgren and Crown Columbia Water Resources, Inc., last year filed a water transfer application seeking to transfer substantial amounts of water out of the Chewuch River basin. Because the CCC’s separate water right would be affected should the pending transfer application be approved, the CCC has formally objected.

As part of the CCC’s review of the documents underlying the water transfer application, the CCC for the first time realized that the Lundgren water right claim at issue, Ecology claim number S4-300641CL (the “Lundgren Claim”), was not filed with Ecology until June 16, 1998, during the 1997 claims registration period. Accordingly, under RCW 90.14.068, and as stated in Ecology’s confirmation letter dated July 15, 1998, the Lundgren Claim is to be administered as junior to all senior rights and “shall not affect or impair in any respect whatsoever any water right existing prior to July 27, 1997.”

Among the water rights existing prior to July 27, 1997, along and downstream from the CCC’s diversion on the Chewuch River are the regulatory minimum instream flows for the Chewuch and Methow Rivers, which were set by Ecology in December of 1976. *See WAC 173-548; see also, e.g., Whatcom County v. Hirst, 186 Wash. 2d 648, 686-87 (Wash. 2016) (confirming that minimum instream flows are water rights); Postema v. Pollution Control Hearings Bd., 142 Wash. 2d 68, 82 (Wash. 2000) (same).*

The CCC, under separate contract with the Lundgrens, diverts water from the Chewuch River for the Lundgrens through the CCC's headgate, and delivers that water to the Lundgren's property throughout the irrigation season. Because the CCC is now aware of the statutory interruptibility of the Lundgren Claim, the CCC in advance of the 2019 irrigation season is formally requesting guidance from Ecology on whether the CCC may continue to divert water for - and deliver water to - the Lundgren property under their claim S4-300641CL even when Chewuch River and Methow River minimum instream flows aren't met.

Please don't hesitate to contact me should you have any questions.

Sincerely,



NATALIE N. KUEHLER, WSBA #50322
Principal
RYAN & KUEHLER PLLC
PO Box 3059
Winthrop, WA 98862

cc: Trevor Hutton, Section Manager